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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

DAVID MCKEW,
 Plaintiff,
 v.
 SAN FRANCISCO MUNICIPAL
 RAILWAY; UNITED STATES POSTAL
 SERVICE; MELVIN WASHINGTON.
 Defendants.

No. C 07-3620 EDL

**ADMINISTRATIVE MOTION TO
 CONSIDER WHETHER CASES
 SHOULD BE RELATED;
 DECLARATION OF JONATHAN U.
 LEE**

Civil Local Rules 3-12(b), 7-11

DAVID MCKEW,
 Plaintiff,
 v.
 SAN FRANCISCO MUNICIPAL
 RAILWAY; UNITED STATES POSTAL
 SERVICE.
 Defendants.

No. C 08-00855 JL

*(This Motion is made in Action 07-03620
 EDL in compliance with the Civil Local
 Rules and filed in Action 08-00855 JL as a
 Special Appearance)*

1 TO THE PARTIES AND TO THE COURT IN ACTION 07-03620 EDL AND BY SPECIAL
2 APPEARANCE IN ACTION 08-00855 JL:

3 **INTRODUCTION**

4 In the interests of judicial economy, the United States Attorney's Office brings this motion to
5 relate the pending action (Action 08-00855 JL), to a previous action brought by the plaintiff
6 (Action 07-03620 EDL).

7 In the earlier action, which involved the same legal claims and defenses based on similar
8 factual occurrence, the Court granted the Federal Defendant's Motion to Dismiss for lack of
9 subject matter jurisdiction. Plaintiff has now cured the jurisdictional defect and refiled this
10 action in San Francisco Superior Court, from which the Federal Defendant removed the action on
11 February 8, 2008.

12 **STATEMENT OF FACTS**

13 **I. Procedural History of the First Action (Action 07-03620 EDL)**

14 On May 30, 2007, plaintiff McKew filed his complaint in San Francisco Superior Court
15 against the San Francisco Municipal Railway, Melvin Washington and the United States Postal
16 Service, alleging personal injuries from motor vehicle negligence on September 2, 2006.

17 The Postal Service removed the action to this Court on July 13, 2007. [Docket #1]

18 The Postal Service moved to dismiss the action on July 27, 2007. [Docket ## 4-6]

19 By stipulations dated October 22, 2007 and November 27, 2007, the Court dismissed the
20 complaint against the United States without prejudice and remanded the action to San Francisco
21 Superior Court. [Docket ## 14, 16-18]

22 **II. Procedural History of This Action (Action 08-00855 JL)**

23 On December 20, 2007, plaintiff McKew filed his complaint in San Francisco Superior Court
24 against the San Francisco Municipal Railway and the United States Postal Service, alleging
25 personal injuries from motor vehicle negligence on September 2, 2006.

26 The Postal Service removed the action to this Court on February 8, 2008. [Docket #1]
27
28

ARGUMENT

The instant action, 08-00855 JL, should be related to the prior action.

First, the two cases are identical in every material respect, involving common legal theories and facts. Both allege plaintiff suffered personal injuries in a motor vehicle incident on September 2, 2006.

Second, it appears likely that there will be an unduly burdensome duplication of judicial effort if the cases are not related.

To foster consistency of the outcome and promote judicial economy, as well as that of the parties, the Court should grant this motion and relate these two cases.

Consistent with Rule 3-12(b), this motion will be filed in the earliest-filed case brought by plaintiff Mohamed, with a copy provided to the Court in the later action as a Special Appearance.

Respectfully submitted,
JOSEPH P. RUSSONIELLO
United States Attorney

Dated: February 13, 2008

/s/

JONATHAN U. LEE
Assistant United States Attorney

DECLARATION OF JONATHAN U. LEE

I, JONATHAN U. LEE, declare:

1. I am an Assistant United States Attorney in the United States Attorney's Office for the Northern District of California, am licensed to practice law in California and to appear before this Court, and am counsel for the United States, making this declaration from my own personal knowledge. If called as a witness, I could and would competently testify to the contents of this declaration.
2. I am the Assistant U.S. Attorney assigned to defend the federal defendants in Action 07-03620 EDL and I brought the motion to dismiss the Court granted in 2007.
3. I am familiar with the facts and issues alleged in Action 07-3620 EDL. There, plaintiff McKew alleged he was injured when he struck a parked Postal Service vehicle. At the time of the injury, Mr. McKew was a passenger on a San Francisco cable car, according to the complaint.
4. In his new complaint, McKew v. Postal Service, Action 08-00855 JL, Mr. McKew makes the same factual and legal allegations about the same incident.

I declare under penalty of perjury that the foregoing is true and accurate and that I have executed this declaration on February 13, 2008 in San Francisco, California.

/s/

JONATHAN U. LEE
Assistant United States Attorney